

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X

GERALD WELLS,

Civil Action No.:

Plaintiff,

-against-

COMPLAINT

MERCANTILE ADJUSTMENT BUREAU, LLC,

DEMAND FOR JURY TRIAL

Defendant(s).

X

Plaintiff GERALD WELLS ("Plaintiff"), by and through his attorneys, M. Harvey Rephen & Associates, P.C by Edward B. Geller, Esq., P.C., Of Counsel, as and for his Complaint against the Defendant, MERCANTILE ADJUSTMENT BUREAU, LLC (hereinafter referred to as "Defendant(s)"), respectfully sets forth, complains and alleges, upon information and belief, the following:

INTRODUCTION/PRELIMINARY STATEMENT

1. Plaintiff brings this action on his own behalf for damages and declaratory and injunctive relief arising from the Defendant's violation(s) of §1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act (FDCPA).

PARTIES

2. Plaintiff GERALD WELLS is a resident of the State of New York, residing at 38 Presford Drive, Shirley, New York 11967.

3. Defendant MERCANTILE ADJUSTMENT BUREAU, LLC is a New York limited liability corporation with an office address at 165 Lawrence Bell Drive, Suite

100, Williamsville, New York 14221.

4. The Plaintiff is a “consumer” as the phrase is defined and used in the FDCPA under 15 USC §1692a(3).

5. Defendant is a “debt collector” as the phrase is defined and used in the FDCPA under 15 USC §1692a(6).

JURISDICTION AND VENUE

6. The Court has jurisdiction over this matter pursuant to 28 USC §1331, as well as 15 USC §1692 et seq. and 28 U.S.C. §2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. §1337(a).

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

FACTUAL ALLEGATIONS

8. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “7” herein with the same force and effect as if the same were set forth at length herein.

9. Upon information and belief, Defendant, on behalf of a third-party or itself as purchaser of the debt, began efforts to collect an alleged consumer debt from the Plaintiff.

10. Upon information and belief, Defendant began its collection efforts and campaign of communications with the Plaintiff on October 23, 2015 by placing a telephone call to Plaintiff’s telephone number 631 729 6553 and leaving a voice message.

11. Defendant's voice message was prerecorded by an unidentified female speaker with a computerized artificial voice inserted to state Plaintiff's name. The message stated that Defendant was calling Plaintiff to collect a debt and requested a return call to 866 851 0083.

12. The recorded greeting at the number where Defendant left the aforementioned message (i.e., "We are unable to answer your call but leave us a message and we'll get back to you promptly") explicitly states that the caller has reached a telephone which is in use by multiple individuals.

13. Defendant's message of October 23, 2015 was overheard by Plaintiff's roommate, Kendall Williams, who consequently learned that Defendant, a debt collector, was trying to reach Plaintiff about a debt.

FIRST CAUSE OF ACTION
(Violations of the FDCPA)

14. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "13" herein with the same force and effect as if the same were set forth at length herein.

15. Pursuant to 15 USC §1692c(b), without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

16. The Defendant violated 15 USC §1692 c (b) on October 23, 2015 by

disclosing to Plaintiff's roommate, Kendall Williams, that Plaintiff, was being contacted by a debt collector about a debt.

17. As a result of Defendant's neglect and carelessness in leaving a telephone message at a voice mail accessible to a third party using Plaintiff's name and debt collection disclosures, Plaintiff suffered extreme embarrassment and distress and according to 15 USC §1692k(a)(1), Defendant is liable to Plaintiff for damages sustained as a result of their failure to comply with §1692 et seq. of Title 15 of the United States Code (the FDCPA).

DEMAND FOR TRIAL BY JURY

18. Plaintiff hereby respectfully requests a trial by jury for all claims and issues in its Complaint to which it is or may be entitled to a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment from the Defendant as follows:

- A. For actual damages provided and pursuant to 15 USC §1692k(a)(1);
- B. For statutory damages provided and pursuant to 15 USC §1692k(2)(A);
- C. For statutory damages provided and pursuant to 15 USC §1692k(2)(B);
- D. For attorneys' fees and costs provided and pursuant to 15 USC §1692k(a)(3);
- E. A declaration that the Defendant's practices violated the FDCPA;
- F. For any such other and further relief, as well as further costs, expenses and disbursements of this action, as this Court may deem just and proper.

Dated: New York, New York
January 6, 2016

Respectfully submitted,

By: Edward B. Geller
Edward B. Geller, Esq. (EG9763)
Edward B. Geller, Esq., P.C., Of Counsel to
M. HARVEY REPHEN & ASSOCIATES, P.C.
15 Landing Way
Bronx, New York 10464
Phone: (914)473-6783

Attorney for the Plaintiff GERALD WELLS

To: Mercantile Adjustment Bureau, LLC
165 Lawrence Bell Drive, Suite 100
Williamsville, New York 14221

(*Via Prescribed Service*)

Clerk,
United States District Court, Eastern District of New York
(*For Filing Purposes*)

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COMPLAINT

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